

STATE OF WASHINGTON



OFFICE OF
INSURANCE COMMISSIONER

In the Matter of

Ben E. Berkley
and
Insurance Benefits Marketing, LLC,

Licensees.

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) No. D 03 - 180
) OAH Docket No. 2003-INS-0008
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) STIPULATION AND ORDER
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Pursuant to RCW 34.05.060 and WAC 10.08.230(2)(b), the parties hereby stipulate and agree to the following in resolution of this matter:

Stipulated Facts and Law

1. Ben E. Berkley and Insurance Benefits Marketing, LLC (IBM) hold insurance licenses issued by the Washington Insurance Commissioner.
2. OIC entered an Order Revoking License on September 25, 2003, revoking these licenses effective October 15, 2003. Pursuant to RCW 48.04.040, Licensees objected to OIC's order and requested an administrative hearing as a result of which, pursuant to RCW 48.04.020, any revocation of Licensees' insurance licenses was suspended while the OIC's action was appealed.
3. In January, 2003, as agent of IBM, Mr. Berkley completed three annuity applications for Washington resident, Caroline Szekely, and submitted them to North American Company for Life and Health Insurance (NACOLAH). These annuities were not approved for sale in Washington. These annuities are approved for sale in Arizona, where Mr. Berkley also holds an insurance license. On Ms. Szekely's application Mr. Berkley provided valid and truthful information but for falsely indicating that these applications had been signed in Arizona where the annuities were approved for sale. The applications were in fact signed in Washington.
4. In February, 2003, as agent of IBM, Mr. Berkley completed an annuity application for Washington resident, Marvin Geisler, and submitted it to NACOLAH. This annuity was not approved for sale in Washington. This annuity is approved for sale in Arizona, where Mr. Berkley also holds an insurance license. On Mr. Geisler's application Mr. Berkley provided valid and truthful information but for falsely indicating the application had been signed in Arizona where the annuity was approved for sale. The application was in fact signed in Washington.

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5. Also in February, 2003, as agent of IBM, Mr. Berkley completed four annuity applications for Harry and Frances Dawson and submitted them to NACOLAH. These annuities are not approved for sale in Washington but are approved for sale in Arizona where Mr. Berkley also holds an insurance license. On the Dawsons' applications Mr. Berkley provided valid and truthful information but for falsely indicating that the applications had been signed in Arizona. The applications were in fact signed in Washington.

6. Also in February, 2003, Mr. Berkley completed a life insurance application for Caroline Szekely on which application he certified that the policy was not to replace any existing insurance or annuity. The premium was to be paid by withdrawing \$10,700 from another policy owned by Ms. Szekely and the OIC contends that life insurance in fact was replacement insurance pursuant to WAC 284-23-410(2). Mr. Berkley did not agree that the life insurance was replacement insurance.

7. At no time material hereto did IBM have an appointment with NACOLAH, and prior to May, 2003, Mr. Berkley did not have an appointment with NACOLAH in Washington State.

8. In July, 2003, as agent of IBM, Mr. Berkley completed an annuity application for Lea L. Polich and submitted it to NACOLAH. This annuity was not approved for sale in Washington but was approved for sale in Arizona where Mr. Berkley also holds an insurance license. On Ms. Polich's application Mr. Berkley provided valid and truthful information but for falsely indicating that the application had been signed in Arizona where the annuity was approved for sale. The application was in fact signed in Washington.

9. Each and every one of the insured persons identified above have had the opportunity to take civil action against Mr. Berkley and/or IBM as a result of their contacts with OIC agents and investigators. Only Ms. Szekely chose to do so and her civil matter has been resolved.

10. The OIC contends, and for purposes of resolving this dispute Mr. Berkley and IBM no longer contest, that the above-described conduct violated RCW 48.30.180, Twisting, RCW 48.30.210, Misrepresentation in Application for Insurance, WAC 284-23-440, Duties of an Agent When Replacement Is Involved, and WAC 284-17-420, Appointments and Affiliations.

Stipulation And Consent To Order

Licensees hereby stipulate to the preceding facts and law and to entry of the following Order. Licensees enter into this stipulation voluntarily and in lieu of OIC's request for revocation of Licensee's licenses for the conduct set forth above and in lieu of any further proceedings in Cause Number D 03-180. Licensees have engaged in practices that are not in accord with the standards set out in Washington Insurance Code and Licensees stipulate and agree that they will comply with all Washington insurance laws and regulations in the future. Licensees further stipulate and agree that the facts set forth above and the fact of this stipulation may be considered by the Commissioner in any future administrative action regarding licensees and that any future violation on the part of Ben Berkley of the statutes and regulations set forth above will result in the permanent revocation of his Washington insurance agent's license. Licensees further stipulate and agree that they will pay a fine of \$5,000, \$2,500 of which amount is due within thirty days of entry of the subjoined orders and the remainder of which shall be due within six months thereafter and that failure to pay such fine when

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due shall constitute adequate grounds for immediate revocation of Licensees' Washington insurance licenses and that the fine will be recoverable in a civil action brought on behalf of the Commissioner by the Attorney General.

Signed this 12th day of March, 2004.

Ben Berkley
Insurance Benefits Marketing, LLC

Office of the Insurance Commissioner

By

Ben Berkley, President

Charles D. Brown
OIC Staff Attorney

T. Jeffrey Keane
Attorney for Licensees

ORDER

IT IS ORDERED that pursuant to RCW 48.17.530, and the foregoing Stipulated Facts and Law and Stipulation and Consent to Order that:

1. Licensees will pay a fine in the total amount of \$5,000, \$2,500 of which amount is due within 30 days of entry of this Order and \$2,500 of which is due within six months thereafter.
2. Licensees shall not engage in the insurance practices set forth in the foregoing Stipulated Facts and Law.
3. Failure to pay the fine set forth herein when due or future violation on the part of Licensees of the statutes and regulations set forth in the Stipulated Facts and Law herein will result in the permanent revocation of their Washington insurance licenses.

ENTERED AT TUMWATER, WASHINGTON, this 14th day of April, 2004.

MIKE KREIDLER
Insurance Commissioner

By: _____
SCOTT JARVIS

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Deputy Commissioner

ORDER TERMINATING PROCEEDINGS

This matter having come before the undersigned Presiding Officer on the stipulation of the parties, pursuant to RCW 48.17.530 and 48.17.560 and stipulation of the parties, it is hereby ordered that OIC Docket Number D 03-180 is hereby closed and the adjudicative proceeding therein is hereby dismissed.

SIGNED AND ENTERED THIS 19th day of April, 2004.

By: _____
PATRICIA D. PETERSEN
Chief Hearing Officer
State of Washington Office of Insurance Commissioner